

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
PETE V. DOMENICI UNITED STATES COURTHOUSE
333 LOMAS BLVD., N.W., SUITE 660
ALBUQUERQUE, NEW MEXICO 87102
TELEPHONE - (505) 348-2280
FACSIMILE - (505) 348-2285



JAMES O. BROWNING
District Judge

August 27, 2010

VIA CM/ECF

Paul Michael Gayle-Smith
Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609

James R. Wood
Miller Stratvert, P.A.
500 Marquette Avenue, N.W., Suite 1100
Post Office Box 25687
Albuquerque, New Mexico 87125-0687

Paula Grace Maynes
Miller Stratvert, P.A.
200 W de Vargas Street, Suite 9
Post Office Box 1986
Santa Fe, New Mexico 87504

Re: West v. New Mexico Taxation and Revenue Department, et al.
No. CIV 09-0631 JB/CG

Dear Counsel:

I want to bring two matters to your attention. I have, with my law clerks, reviewed the Judicial Code of Conduct and do not believe these matters require me to recuse myself. I want, however, everyone to be fully informed about, and fully comfortable with, my participation in the case.

I had contact with Congressman Bill Richardson's office while I was Deputy Attorney

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General of New Mexico, and, as Governor, he introduced me as a guest at one of his Prayer Breakfasts. To the best of my knowledge, I have never spoken to him or been introduced to him, although we have at least one good mutual friend, Paul Bardacke. Mr. Richardson and I do not socialize, and I have not been in the Governor's mansion while he has been governor. He has not been in my home.

I also want to bring my prior contact with Secretary Jan Goodwin to your attention. It is my memory that I have met Secretary Goodwin on at least one occasion. Before taking the bench in August, 2003, my former law firm and three other law firms represented the Taxation and Revenue Department in a series of cases and administrative matters against oil and gas companies to collect state taxes imposed on the severance of oil and gas. For some understanding of that litigation, see Chevron U.S.A. v. New Mexico ex rel. Department of Taxation and Revenue, 2006 N.M. App. 23 (Ct. App. March 9, 2006). We had a series of contracts with the state and, when in court, I was commissioned by the current Attorney General as a special assistant attorney general. In that capacity, I had meetings with people in the Department to discuss our proposals, contracts, fees, costs, strategy, litigation decisions and assessments on taxpayers. It is my recollection that the current Secretary may have attended a few of those meetings.

One of the reasons I was probably chosen to assist the Department in the oil and gas cases was because of my experience of litigating against the Department. While at the Rodey law firm in the 1980s, I litigated gross receipts and compensating tax cases against the Department. At least one involved a published opinion.

I have had no involvement in your matter and have not been privy to any facts or circumstances of this case outside what I am now learning from the file and what may be in the public domain. I have not represented the Board of Finance since I was Deputy Attorney General in 1987-1988. I am not a friend of Secretary Goodwin, have not socialized with her, and have not seen or talked to her since I became a judge. I do not believe I would recognize her if I were to see her. I also have no financial interest in that ongoing litigation. Ms. Goodwin has not been in my home, nor have my wife and I been in hers.

While I do not know much about your case yet, I believe that I can be fair and impartial. While a judge should disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, I do not think, based on my prior relationship with the Department, that my impartiality can reasonably be questioned in a case -- unrelated to that work -- in which Secretary Goodwin might appear as a witness.

I believe that I can be fair and impartial. If anyone, however, has any questions about the above, please let my Courtroom Deputy Clerk, K'Aun Wild, know, and we can perhaps have a conference call. I have instructed Mrs. Wild not to tell me who may call.

Best regards.

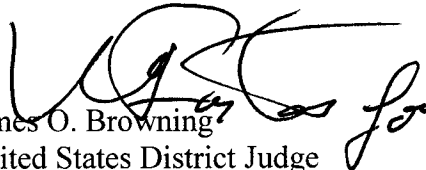
Counsel of Record

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Sincerely,


James O. Browning
United States District Judge